



COMMISSION MEETING MINUTES

October 25, 2004

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, October 25, 2004, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

PRESENT: Jose Cuevas, Jr., Commissioner
Gail Madden, Commissioner

STAFF PRESENT: Alan Steen, Administrator

Carolyn Beck, Public Information Officer,
Executive

Lou Bright, General Counsel, Executive Division

Del Drake, Office of Professional Responsibility

Loretta Doty, Director, Human Resources Division

Jeannene Fox, Assistant Administrator,
Executive Division

Buck Fuller, Director, Compliance Division

David Garza, Director, Homeland Security,
Executive Division

Russell Gregorczyk, Internal Auditor

Amy Harrison, Director, Licensing Division

James T. Irvin, Radio Shop Telecommunications
Specialist, Business Services Division

Linda Jackson, Assisting Executive Division

Renee Johnston, Executive Assistant, Executive Division
Dexter K. Jones, Acting Director, Marketing Practices, Executive Division
Charlie Kerr, Director, Business Services
James "Sam" Smelser, Chief of Enforcement
Rod Venner, Deputy Assistant Chief of Enforcement
Gloria Villaseñor, Administrative Assistant, Enforcement/Grants

GUESTS PRESENT: Doug DuBois, Jr., Director of Membership and Education, Texas Petroleum Marketers and Convenience Store Association
Glen Garey, General Counsel, Texas Restaurant Association
Alan Gray, Licensed Beverage Distributors, Inc.
Jay Howard, Representing Discus/Wal-Mart
Winston Krause, Representing Greater Austin Merchant's Association
Karen Latta, Policy Analyst, Sunset Advisory Commission
Emilie Leroux, Policy Analyst, Sunset Advisory Commission
Fred Marosko, Texas Package Stores Association
M. Jack Martin, Attorney at Law
J. McCartt, Hillco
Mike McElhaney, Governor's Advisor, Office of the Governor
Mike McKinney, Executive Vice President, Wholesale Beer Distributors of Texas
Lindsay Meche, Republic Beverage
Michael Mims, Director of Licensing, H-E-B
Christian Ninaud, Policy Analyst, Sunset Advisory Commission
Steve Ross, Media Director, Texans Standing Tall
Robert Sparks, Executive Director, Licensed Beverage Distributors, Inc.

Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Randy Yarbrough, Wholesale Beer Distributors of
Texas

CALL TO ORDER

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order.

NEW COMMISSIONER OATH OF OFFICE

Chairman Steen administered the oath of office to Jose Cuevas, Jr., and he and Commissioner Madden welcomed Commissioner Cuevas to TABC.

APPROVAL OF COMMISSION MEETING MINUTES OF SEPTEMBER 27, 2004

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of September 27, 2004. **Commissioner Madden moved that the Commissioners approve the minutes of the September 27, 2004, meeting. Commissioner Cuevas seconded the motion but abstained from the vote. The motion carried.**

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report.

Administrator Steen reported that the week of October 23-31, 2004, has been designated as Red Ribbon Week. The Texas Commission on Alcohol and Drug Abuse is sponsoring the statewide celebration. Administrator Steen explained that the Red Ribbon campaign promotes drug-free lifestyles among young people. The first Red Ribbon celebration was organized in 1986 by a grassroots organization of parents concerned about the destruction caused by alcohol and drug abuse. The red ribbon was adopted as a symbol of the movement in honor of Enrique "Kiki" Camarena, an agent with the U.S. Drug Enforcement Administration who was kidnapped and killed while investigating drug traffickers. The

campaign has reached millions of children and has been recognized by the U.S. Congress.

Administrator Steen stated that the agency has received the Sunset staff report recommendations; TABC's responses are due to the Sunset Advisory Commission by November 3. Information will be shared with the Commissioners to obtain their input. Administrator Steen thanked the Sunset staff for their assistance through the process.

Administrator Steen also provided a brief report on the following activities:

- The Audit Committee met earlier that day to review the Internal Audit Report of the Enforcement Division Headquarters Operations and the Internal Audit Annual Report for FY 2004.
- Staff made presentations on TABC issues at the Wholesale Beer Distributors meeting and at the Senate Committee on Intergovernmental Relations meeting.
- TABC's State Employee Charitable Campaign kickoff was held. TABC had a participation rate of 87.2% last year.
- TABC's warehouse operations project has been completed. Supplies and other warehouse operations have been moved to the warehouse--in cheaper lease space and resulting in better efficiencies. Administrator Steen commended staff for their efforts in the project.
- TABC and Mothers Against Drunk Driving (MADD) have met regarding Youth Power Camps for the summer.
- The training academy for TABC's nine new cadets is nearing completion. TABC is, at present, fully staffed with agents.
- TABC dedicated resources for a computer lab on the third floor of headquarters that can be used for "real-time" training. The computers are wireless and can be utilized in the field for training.
- Mary Cardwell has been temporarily moved from the Licensing Division to the Human Resources Division to develop, format, and rewrite the agency's policies so that TABC can begin addressing some of the recommendations made by Sunset.

Chairman Steen commended Administrator Steen for his detailed and thorough administrator's report sent to the Commissioners earlier.

Chairman Steen stated that he and Jeannene Fox had met with Howard Wolf, a public member of the Sunset Advisory Commission, earlier that day. Mr. Wolf provided comments on TABC, separate from the Sunset staff recommendations. **Chairman Steen asked Ms. Fox to prepare an executive**

summary of the meeting. Chairman Steen asked Karen Latta, Policy Analyst with the Sunset Advisory Commission, if the Commissioners were to respond to Sunset as a board, or separately. Ms. Latta responded that they may respond in one agency report or could send specific comments separately if they wish. Commissioner Madden thanked Ms. Latta and other Sunset staff for their assistance.

APPROVAL OF INTERNAL AUDIT REPORT OF THE ENFORCEMENT DIVISION HEADQUARTERS OPERATIONS

Chairman Steen called upon Russell Gregorczyk, to report on the Internal Audit Report of the Enforcement Division Headquarters Operations (Attachment 1) and to explain his involvement in TABC's internal auditing function.

Mr. Gregorczyk explained that his CPA firm has conducted internal audits for the agency for four years and conducts internal audits for other state agencies.

Mr. Gregorczyk stated that the main purposes of the internal audit were to evaluate: the effectiveness of oversight of enforcement functions performed by the Enforcement Division field offices; the effectiveness of the division's management reporting system; and the reliability and integrity of performance measure reporting. The main finding was that the Enforcement Division collects a tremendous amount of data that appears is too much to be effectively and efficiently managed. Mr. Gregorczyk highlighted other key audit observations.

Commissioner Madden noted that TABC management concurred with all the recommendations made in the report and that some were already implemented or were in process of being implemented. Commissioner Cuevas added that he could see how the agency is working to better manage its information, such as revising policies and procedures and implementation of the Information Technology project. Chairman Steen commended Administrator Steen for his leadership in this area, noting that Administrator Steen implemented a tracking process. Administrator Steen stated that Management Audit Committee (MAC) meetings have been implemented and that audit recommendations and their implementation status are reviewed and tracked on a monthly basis.

In response to some questions asked by Commissioner Cuevas concerning the audit plan, **Mr. Gregorczyk stated that he would provide Commissioner Cuevas with a copy of the audit plan showing the risk assessment.**

APPROVAL OF INTERNAL AUDIT ANNUAL REPORT FOR FY 2004

Mr. Gregorczyk discussed the Internal Audit Annual Report for FY 2004, briefly reviewing the key audit findings and recommendations as well as the quality assurance review (Attachment 2). The following topics were audited in FY 2004:

- Audit of Training and Staff Development;
- Audit of the General Services Section; and
- Audit of the Enforcement Division Headquarters Operations.

Mr. Gregorczyk stated that most of the recommendations have been implemented or are in process of being implemented. He stated that a follow-up will be conducted in 2005 to verify that the recommendations were implemented. Mr. Gregorczyk stated that the following topics would be audited in FY 2005:

- Business Services Division – Accounting;
- Enforcement Division – Field Operations;
- Compliance Division – Field Operations; and
- Licensing Division – Headquarters Operations.

Chairman Steen called for a motion to approve the Internal Audit Report of the Enforcement Division Headquarters Operations. Commissioner Madden moved that the Commission approve the Internal Audit Report of the Enforcement Division Headquarters Operations. Commissioner Cuevas seconded the motion. The motion carried.

Chairman Steen called for a motion to approve the Internal Audit Annual Report for FY 2004. Commissioner Madden moved that the Commission approve the Internal Audit Annual Report for FY 2004. Commissioner Cuevas seconded the motion. The motion carried.

FISCAL STEWARDSHIP REPORT

Chairman Steen called upon Charlie Kerr, Director of Business Services, to present the fiscal stewardship report.

Mr. Kerr referred the Commissioners to the key performance measure listing for FY 2004 (Attachment 3). He explained that TABC exceeded the performance targets for every measure in FY 2004, although that also included efficiency measures. Exceeding efficiency measures meant that TABC did not meet the standards set; however, there was a legitimate reason for this occurring. The agency received additional funding beyond the funding originally anticipated; consequently, additional expenditures were allocated to the various strategies which then impacted the average cost for processing licenses and conducting inspections. Mr. Kerr stated that this is not of great concern, as TABC intends to make adjustments to the performance targets for the 2006-2007 biennium.

Mr. Kerr expressed appreciation of the employees in the Warehouse who were responsible for the successful implementation of the Warehouse project: Rick Hewlett, James Irvin, and Rory Martin.

APPROVAL OF 2005 COMMISSION MEETING DATES

Chairman Steen referred to the proposed Commission meeting dates for 2005 listed on the agenda (January 24, February 28, March 28, April 25, May 23, June 27, July 25, August 22, September 26, October 24, November 28, December 19), noting that the dates could be changed if needed even after approval. **Commissioner Madden moved that the Commission approve the proposed 2005 Commission meeting dates as listed. Commissioner Cuevas seconded the motion. The motion carried.**

PUBLIC COMMENT

Chairman Steen stated that two people had registered to make public comments. He first called upon Winston Krause, attorney representing the Greater Austin Merchant's Association, who indicated he wanted to make statements concerning legal residency.

Mr. Krause stated that the Greater Austin Merchant's Association (GAMA) is a group of owners of convenience stores in central Texas area that are affiliated with similar groups in Texas. Mr. Krause stated that he also represents six permit holders in the Beaumont area. He explained that many of GAMA's members are immigrants to the United States, some are citizens, and some are non-permanent residents attempting to achieve permanent status.

He stated that there were two issues of concern for these groups. The first one—which Mr. Krause stated was not as critical as the other issue—deals with naturalized citizens being required to complete personal information on applications regarding port of entry, application for visa, and other citizenship information. He stated that it is a concern for those naturalized citizens who must sign applications under penalty of perjury, exposing them to criminal liability, if they no longer have documentation or are unable to reconstruct the information. Mr. Krause stated that a change in the form or instruction could alleviate this problem. He expressed appreciation for TABC staff working with him on this issue, and stated that he believed the issue is being resolved.

Mr. Krause stated that the more critical issue deals with the determination of who is considered to be legally residing in the state of Texas. Mr. Krause stated that prior to 9/11, it had been TABC's practice to issue permits to those applicants who were qualified but were not necessarily U.S. citizens or permanent residents but applicants with visas or work permits. Mr. Krause stated that since 9/11, TABC enforcement has been looking at the applications, especially in the Beaumont area, and taking cases to the Jefferson County District Attorney's Office for indictments. He stated that at least five of these cases are pending, and except for one case, this is the first interaction his clients have had with the American justice system.

Mr. Krause commended TABC staff for working with him to address this issue. He stated that the enforcement actions have abated while the legal residency issue is being worked out. He discussed TABC General Counsel Lou Bright's preliminary opinion on what the agency's position should be, which would rely heavily on the federal government's determination of U.S. legal residency. Mr. Krause stated that he disagreed with relying on the federal government's interpretation, noting that there are four federal agencies that can determine one of several statuses—including no

status—of individuals. Rather, Mr. Krause recommended that TABC rely on Texas law that addresses the residency issue. He stated that if the agency would consider what Texas law has to say about lawful residency, the agency would then be allowed to come up with a workable set of rules for determining who can hold a license, without the agency having to rely on the federal government.

Commissioner Madden asked Mr. Krause what was the preponderance of nationality of his clients; Mr. Krause replied that it was mostly Southeast Asian, such as persons from India and Pakistan.

Commissioner Madden asked General Counsel Lou Bright if TABC and Mr. Krause agreed on the issue. Mr. Bright clarified that the Alcoholic Beverage Code states that in order for a person to qualify for a permit, the person must be a citizen of this state, residing in this state for at least a year prior to submission of the application. Elsewhere in the law, a person who legally resides in the state is qualified for a permit. Mr. Bright stated that regretfully, he was inclined to believe that the phrase “legally resides” means that TABC must take federal immigration law into account. He stated that he and Mr. Krause have had several discussions and are far from being adversarial on the issue. Mr. Bright has provided a letter to Mr. Krause that lays out tentative conclusions about how TABC interacts with federal immigration. He stated that if it does come to a point that he and Mr. Krause disagree on the legal residency issue, then at least it would be known at that time as to precisely what is disagreed upon and why.

Commissioner Madden requested that a copy of Mr. Bright’s letter be shared with the Commissioners; Mr. Bright stated that he would provide a copy. Commissioner Madden added that she thought it was important that TABC be sensitive to the homeland security issue. Mr. Bright stated that because of 9/11, more resources have been devoted to homeland security, which is what has spurred the closer review of applications.

Chairman Steen asked Mr. Krause for more information on the Beaumont clients he mentioned earlier. Mr. Krause stated that his clients are permit holders—some holding multiple permits and some being permit holders since the late 1990s. Background checks were done on his clients, in which a TABC agent consulted with the INS and border patrol to build

cases against these permit holders not being truthful about being legal residents. Now, his clients are involved in the criminal process.

Chairman Steen then called upon Steve Ross, Media Director for Texans Standing Tall, who had registered to provide a statement about parental notification. Mr. Ross stated that he was pleased to announce that Texas was presented a special recognition award at the Underage Drinking Enforcement Training Center's Fifth Annual National Leadership Conference for reducing underage drinking (Attachment 4). He explained that Texans Standing Tall, the Office of the Governor, and TABC collaborated to organize a series of forums to inform college administrators, members of the judicial system, campus planning teams, and campus enforcement officers about the potential of parental notification policies to change the college climate on underage alcohol use. Mr. Ross thanked TABC for its collaboration efforts in this successful program.

REMAINING MEETINGS FOR 2004

Chairman Steen announced that the remaining meetings for the year are scheduled for November 22 and December 20.

ADJOURNMENT

Commissioner Madden moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Commissioner Cuevas seconded the motion. The motion carried, and the meeting adjourned.